



# COMMONWEALTH of VIRGINIA

## Office of the Governor

Brian J. Moran  
Secretary of Public Safety  
and Homeland Security

April 17, 2020

Dear Legislators,

Thank you for your letter outlining your concerns about the impact of COVID-19 on individuals who are incarcerated. We are working diligently to ensure the health, safety, and wellbeing of all Virginians. The Virginia Department of Corrections (DOC) and the Virginia Department of Juvenile Justice (DJJ) are taking every precaution, and following Centers for Disease Control (CDC) and Virginia Department of Health (VDH) guidelines to protect individuals who are incarcerated and have extensive plans in place. Additionally, we have encouraged sheriffs and regional jail administrators to prevent the spread of COVID-19 in their facilities by collaborating with Commonwealth's attorneys and defense attorneys to safely reduce the jail population based on guidelines issued by Governor Northam.

It is evident that Governor Northam's guidance to localities is being utilized and working. Since late February, the number of new commitments to local and regional jails has decreased from approximately 10,000 during a two-week period to just over 4,000. On April 7, the jail population in the Commonwealth was 24,000, which represents a 17% decrease from March 1. We have also seen a 67% decline in the number of new commitments for misdemeanors across the Commonwealth. These reductions are proof that public safety agencies are working effectively together to decrease the population in local and regional correctional facilities.

Additionally, in response to this pandemic, Governor Northam proposed budget language that would authorize the Director of DOC to consider early release for individuals with less than one year left to serve while the COVID-19 emergency declaration is in effect. Any early release must be compatible with the welfare of society and public safety. Offenders who have been convicted of a Class 1 felony or a sexually violent offense would be ineligible for consideration. The exact number of individuals who would be eligible for early release consideration will change depending on the length of the emergency declaration order.

Parole was abolished in Virginia in 1995. Given this, the Virginia Parole Board (VPB) has very limited authority to release individuals. Currently, individuals who were sentenced before 1995 are eligible for discretionary release, and individuals who are 60 and have served 10 years or 65 and have served five years are eligible for discretionary geriatric release. In order to expand parole eligibility more quickly during this pandemic, Governor Northam proposed an emergency clause to Senate Bill 793 and House Bill 33, which make individuals affected by *Fishback v. Commonwealth* eligible for parole.

There are approximately 2,500 individuals currently eligible for release consideration by the VPB. Of these individuals, nearly 95% have been convicted of violent offenses, with approximately 35% convicted of murder and 25% convicted of sexual offenses.

Despite the challenging convictions around this population, the VPB is working diligently to expedite the review of eligible individuals, and granted parole to 95 individuals during the month of March. This is a 163% increase. Additionally, the VPB has authorized the immediate release of all parole-granted offenders who have approved home plans and once victims have been notified. It is critical to note that the VPB must continue to prioritize public safety, follow statutory requirements, and uphold the rights of victims during this unprecedented time.

Moreover, the VPB continues to review pardon requests and make recommendations to the Governor, which are being acted on. Each pardon request must be reviewed individually to meet legal standards and ensure that the complexities of each case are considered. The VPB will continue to thoroughly review and investigate pardons prior to making a recommendation to the Governor to ensure that a person's release is compatible with public safety and that adequate time is allowed for victim input. It is oversimplified to suggest that public safety decisions can be based solely on one general criteria, like a person's age. Years of experience and evidence tells us that each case is unique and must be reviewed before invoking the executive clemency power.

As the Virginia Parole Board reviews individual cases for parole or a pardon, consideration must be given to challenges involving the release of older offenders and offenders with underlying health conditions which are now an exponentially greater concern than prior to the pandemic. The Administration shares the VPB's concerns about the increased potential for exposure to the virus in other congregate care facilities and the decreasing number of available hospital beds. The VPB will continue to work creatively to find placements when release is appropriate.

As of early April, approximately 60% of DJJ's overall committed population and 70% of all Bon Air Juvenile Correctional Facility commitments were determinate sentences, which includes those with DOC blended sentences (Bon Air currently has about 200 youth). DJJ only has the authority to release about 60 or so youth who meet the criteria of indeterminate commitment. While DJJ does have the authority to release these residents, Code of Virginia §16.1-285 provides that the Department must have regard for the welfare of the juvenile and interests of the public when doing so. DJJ's committed population consists mostly of moderate and high risk youth per DJJ's risk assessment. Others, whose overall risk might be lower, are involved in sex offender treatment.

The average length of stay (LOS) for DJJ committed youth is 6-9 months. DJJ Treatment Teams continuously monitor youth's progress and eligibility for release. The Department has directed the review of all indeterminate committed youth beginning with those with 30-60 days remaining on their LOS. DJJ is reviewing the nature of the committing charges, the youth's recent behavior, along with the needs of the youth in this process to assess public safety and to consider how much treatment has been completed and whether or not there are mechanisms for continued treatment in the community.

DJJ is coordinating release plans across the residential facility, Court Service Unit Parole Office, service providers, and family to ensure that a viable plan can be obtained within a short period of time as we consider indeterminately committed youth for release.

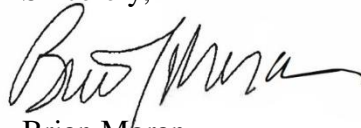
Virginia has the lowest recidivism rate in the nation for the fourth year in a row due to DOC's work on reentry planning and programming. The COVID-19 pandemic has disrupted, diminished, or entirely eliminated community safety nets including transitional housing options, substance use disorder treatment, mental health services, and employment opportunities. In the best of times, reentry preparation may take months or years, not weeks. DOC and DJJ must take into account the needs of the individual and the availability of services to ensure a successful return to the community.

We recognize the duality and severity of this issue and will continue working to ensure the health, safety, and well-being of all Virginians. As we continue to work to address COVID-19, we must do so responsibly and with accountability.

As you suggested, early release, parole, clemency, bond determinations, and the discretionary release of youth are concrete ways that state and local officials can confront the pandemic in facilities to reduce the inmate population and slow the spread of COVID-19 and we are working diligently to do just that.

We look forward to continuing to work with you to address these issues in support of incarcerated individuals.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Moran".

Brian Moran

Secretary of Public Safety & Homeland Security

A handwritten signature in blue ink, appearing to read "Kelly Thomasson".

Kelly Thomasson

Secretary of the Commonwealth